



OFFICE MEMORANDUM

DATE: September 24, 1996

TO: District Engineers
District Field/Construction Engineers
Resident/Project Engineers

FROM: Gary D. Taylor
Chief Engineer/Bureau Director
Bureau of Highway Technical Services

Thomas A. Coleman
Bureau Director
Bureau of Highway Operations

SUBJECT: CONSTRUCTION CIRCULAR LETTER 1996-4
Review of Contractor Claims
(Supersedes Construction Circular Letter 1994-3)

The instructions contained in the attached letter, sent to all Prequalified Contractors and dated September 24, 1996, supersedes previous instructions transmitted by Construction Circular Letter 1994-3.

The outlined procedure must be followed in presenting a Contractor's request for extra compensation as stipulated in Subsection 1.05.12 (104.09) of the 1990 (1996) Standard Specifications for Construction book.

Gary D. Taylor
Chief Engineer/Bureau Director

Thomas A. Coleman
Bureau Director

BOH:CD:PFM:AQS:tml
Attachment

cc: Lansing Construction Division Engineers
Lansing Construction Technicians
POST on bulletin board
Engineering Services Division
M&T Division
Design Division
Maintenance Division
T&S Division
OEO, Jesse Brown
R. Welke
T. Coleman
G. Taylor
P. Isom
H. Linne

P. Phaner
R. Knapp
R. Beckon
AUC
MRBA
MCA
MCPA
MAPA
MMRC
Michigan Municipal League
Counties

Subject Index: Central Office Review

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STATE OF MICHIGAN



JOHN ENGLER, GOVERNOR

DEPARTMENT OF TRANSPORTATION

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ROBERT A. WELKE, DIRECTOR
September 24, 1996

TO: ALL PREQUALIFIED CONTRACTORS

RE: Review Process for Contractor's Claims

This letter supersedes prior information on this subject transmitted to all Prequalified Contractors dated November 3, 1994.

The following claims procedure is established as stipulated in the Department's 1990 (1996) Standard Specifications for Construction Subsection 1.05.12 (104.09) respectively and shall be observed by a Contractor who seeks extra compensation or an extension of time.

I. CONTRACTOR NOTICE OF INTENT TO CLAIM

Necessity of Filing Notice of Intent to Claim and Its Contents:

- A. When filed, the Notice of Intent to Claim shall conform to the requirements of Subsection 1.05.12 (104.09) and shall contain the factual basis for the claim in sufficient detail to enable the Resident/Project Engineer to:
 - 1. Analyze the facts which gave rise to the claim, and
 - 2. Monitor and record the actual cost in time and/or money incurred by the Contractor.
- B. The Resident/Project Engineer shall sign and date the Contractor's Notice of Intent to claim upon receipt and return a copy of such notice to the Contractor.

II. FILING A CLAIM

If the matter described in the Notice of Intent to claim is not resolved and the Contractor desires to pursue the matter, the Contractor shall submit a claim that meets the requirements of Subsection 1.05.12c (104.09.D and E) to the Resident/Project Engineer.

III. RESIDENT/PROJECT ENGINEER'S ACTION ON CLAIM

- A. Within 30 calendar days after receipt of claim, the Resident/Project Engineer may

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request additional information and/or documentation from the Contractor to better understand the claim and/or schedule a meeting with the Contractor to review all aspects of the claim.

- B. If the Resident/Project Engineer requests additional information as provided in paragraph above, the Resident/Project Engineer shall schedule a meeting within 30 days after receipt of such information.
- C. Within 30 days of the claim meeting, the Resident/Project Engineer shall provide the Contractor with a written decision regarding the claim.
- D. The decision of the Resident/Project Engineer does not constitute final Department action until all approvals required by the contract are properly obtained.
- E. All individual project level claims resolved and approved by the Department will not be part of any future District or Central Office Claim Review.

IV. APPEAL OF RESIDENT/PROJECT ENGINEER-S DECISION

- A. If the Contractor wishes to appeal the Resident/Project Engineer-s decision, the Contractor shall submit a written appeal to the District Engineer (this refers to District Engineer and/or Field Engineer) within 30 calendar days after the date of written decision by the Resident /Project Engineer. The written appeal shall include the information required in Subsection 1.05.12c (104.09.E), as well as the contractor-s argument in countering the Resident/Project Engineer-s decision. The Contractor-s written claim at this point shall clearly state each issue being disputed and either a specific dollar amount or basis on which a dollar amount will be determined for each issue.
- B. Upon receipt of the written appeal form the Contractor, the District Engineer shall create a Aclaim file@. The claim file shall include the Contract-s written appeal, all documents submitted by the Contractor in support of the appeal, and all documents supporting the position of the Resident/Project Engineer. The District Engineer shall schedule the District Claim Hearing when it is determined that all related issues or claims have been brought forth by the Contractor.
- C. Within 30 days of the District Claim Hearing, the District Engineer shall provide the Contractor with a written decision regarding the claim.
- D. The decision of the District Engineer does not constitute final Department action until all approvals required by the contract are properly obtained.
- E. If the Contractor receives a favorable decision (approval) on a portion of the claim at the District Claim Hearing but appeals the unapproved portion of the claim through a Central Office Review (COR), the portions approved will not be reflected in a Recommendation (Form 1100) pending a final decision and resolution of the entire claim. The COR panel shall review such partial approvals to verify their legitimacy when reviewing the remaining issues of the claim and may modify or reverse the District Decision.

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V. CENTRAL OFFICE REVIEW (COR)

- A. If the Contractor does not accept the decision of the District, the Contractor may file a written appeal with the District Engineer requesting COR. Such appeal shall be filed within 15 calendar days after receipt of the District decision. The written appeal shall present the Contractor's argument in countering the District decision. Within 15 calendar days of the written appeal, the District shall submit the Contractor's appeal and seven copies of the claim file to the COR Moderator (hereafter: Moderator).
- B. The COR panel shall consist of three Department engineers selected from the resource of District Engineers, District Field Engineers, or Division Engineers with District Engineer experience who have had no involvement in the subject contract. A maximum of two Field Engineers per panel will be permitted. A District Engineer or Division Engineer with District Engineer experience will be appointed panel chairperson. In emergencies, if the panel is short one member on the day of the COR, a Construction Staff Engineer or Division Engineer with no involvement in the subject contract may fill in as a substitute panel member. The panel chairperson and /or the panel members will determine who will write the COR decision.
- C. The Moderator will be the Engineer of Construction or his designee. The Moderator will not participate in the decision making process of the COR.
- D. The Moderator and panel members will review the claim file to insure that all of the information needed to respond to the issues raised in the claim are available for review at the COR. If it is determined that additional information is needed, the Moderator may request either the Contractor or District Engineer to supply the information.

If additional information is submitted by either party, the Moderator shall distribute the information packet to the opposite party at least 5 days prior to the date of the COR. No new material may be presented at COR hearing without approval of the panel chairperson.

- E. The Moderator shall schedule and conduct a COR at which the Contractor and District representatives will present their positions on the claim. The COR shall be limited to a review of the material in the claim file, the material submitted as part of the appeal, any material provided to the Moderator in writing at least ten (10) days prior to the COR, and the oral representation made at the COR.
- F. The Director or his representative shall transmit the Department's written decision to the Contractor within 60 days of the COR. Insofar as possible, the decision shall be specific as to the dollar amounts, time extensions requested and the reasons for approval, partial approval, or disapproval of the claim.

This response shall constitute the Department's final decision regarding the claim and any portions of the claim not granted are denied.

VI. GENERAL PROVISIONS

- A. Any decision made by the Department at any stage in the claim process shall not constitute an admission of liability or set future precedent.

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- B. All meetings held throughout the claim process shall include all issues of the claim.
- C. A COR will not be scheduled or held until all claims associated with the project have been filed by the Contractor and determined at the District level.

An exception may be made if a claim involves high cost, is an ongoing situation on a multi-year project and is not related to any other pending claim.